

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BORIS C. MURPHY,

Petitioner,

v.

B.M. TATE,

Respondent.

No. 1:22-cv-00124-ADA-EPG (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
RESPONDENT'S MOTION TO DISMISS,
DENYING PETITION FOR WRIT OF
HABEAS CORPUS, AND DIRECTING
CLERK OF COURT TO CLOSE CASE

(ECF Nos. 8, 14)

Petitioner Boris C. Murphy is a federal prisoner proceeding pro se with a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2241. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 15, 2022, the Magistrate Judge issued findings and recommendations recommending that Respondent's motion to dismiss for non-exhaustion be denied and the petition for writ of habeas corpus be denied on the merits. (ECF No. 14.) The findings and recommendations were served on the parties and contained notice that any objections were to be filed within thirty (30) days of the date of service of the findings and recommendations. On December 13, 2022, Petitioner filed timely objections. (ECF No. 15.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de novo review of the case. Having carefully reviewed the entire file, including Petitioner's objections, the Court will adopt the findings and recommendation and deny the petition.


1 In his objections, Petitioner challenges the Magistrate Judge's reliance on the "Notice of
2 Discipline Hearing Before the (DHO)," asserting that the signature on the notice was not
3 Petitioner's and had been forged. (ECF No. 15 at 3.) In support of this assertion, Petitioner has
4 submitted various documents with his signature. (*Id.* at 8–10.) Assuming that the signature was
5 not Petitioner's and Petitioner did not receive the written "Notice of Discipline Hearing Before
6 the (DHO)," Petitioner nevertheless has not established that he suffered any prejudice from not
7 receiving advanced written notice of the DHO hearing. *See Graves v. Knowles*, 231 F. App'x
8 670, 672–73 (9th Cir. 2007) (applying harmless error review to due process claims in the prison
9 disciplinary context). Petitioner does not claim that he was unable to marshal facts and prepare
10 his defense due to the failure to receive advanced written notice. In fact, "Petitioner agrees, the
11 Magistrate Judge is correct about him being aware of the charge (verbally)." (ECF No. 15 at 2.)

12 Accordingly:

- 13 1. The findings and recommendations issued on November 15, 2022, (ECF No. 14),
14 are adopted;
- 15 2. Respondent's motion to dismiss, (ECF No. 8), is denied;
- 16 3. The petition for writ of habeas corpus is denied; and
- 17 4. The Clerk of Court is directed to closed the case.

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20 IT IS SO ORDERED.

21 Dated: February 14, 2023

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UNITED STATES DISTRICT JUDGE